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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROY ANTHONY MALDONADO,

Defendant and Appellant.

H043371

(San Benito County

Super. Ct. No. CR1400652)

**I. INTRODUCTION**

Defendant Roy Anthony Maldonado pleaded no contest to attempted second degree murder (Pen. Code, §§ 187, 664)<sup>1</sup> and shooting at an inhabited dwelling (§ 246), and he admitted a gang allegation (§ 186.22, subd. (b)(1)(C)) as to the attempted murder count. The trial court imposed a 20-year eight-month prison term.

On appeal, defendant contends, and the Attorney General concedes, that the trial court erred by imposing a protective order at the time of sentencing pursuant to section 136.2, subdivision (i)(1). We will strike the protective order and order the trial court to amend the abstract of judgment to omit its reference to the protective order.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

## **II. BACKGROUND**

On April 20, 2014, officers responded to a report of shots fired. David Solis told the police that his nephew, Christian Garza, had been shot. Garza had gunshot wounds in his abdomen, back, and thigh. Garza reported that “three ‘guys’ ” had come to his residence and started fighting him. David Solis tried to pull one of the suspects away from Garza. Another uncle, Gilbert Solis, ran outside and was present when Garza was shot.

Defendant was subsequently charged with numerous offenses, including attempted first degree murder, shooting at an inhabited dwelling, and assault with a firearm on Garza, David Solis, and Gilbert Solis.

On August 13, 2015, defendant entered into a plea agreement, pursuant to which he pleaded no contest to attempted second degree murder and shooting at an inhabited dwelling and admitted a gang allegation as to the attempted murder.

At the sentencing hearing held on March 11, 2016, the trial court imposed an aggregate prison sentence of 20 years eight months. The trial court also issued a protective order pursuant to section 136.2, subdivision (i)(1) protecting Garza, David Solis, and Gilbert Solis.

## **III. DISCUSSION**

Defendant contends, and the Attorney General concedes, that the trial court erred by imposing a protective order at the time of sentencing pursuant to section 136.2, subdivision (i)(1). That section requires the trial court to “consider issuing” a protective order preventing the defendant from contact with a victim, upon a defendant’s conviction of “a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261 [rape], 261.5 [unlawful sexual intercourse with a minor], or 262 [spousal rape], or any crime that requires the defendant to register [as a sex offender] pursuant to subdivision (c) of Section 290.” (§ 136.2, subd. (i)(1).)

“[S]ection 136.2(i)(1) authorizes a postconviction restraining order (1) when the crime qualifies as a ‘domestic violence’ crime [or other enumerated crime], and (2) the protected person qualifies as a ‘victim.’ ” (*People v. Beckemeyer* (2015) 238 Cal.App.4th 461, 466.) In this case, defendant was not convicted of any crimes that qualified as domestic violence crimes, and he was not convicted of violating section 261, 261.5, or 262, or any crime that required him to register as a sex offender pursuant to section 290, subdivision (c). (See § 136.2, subd. (i)(1).) Thus, as defendant contends and the Attorney General concedes, the protective order was not authorized by section 136.2, subdivision (i)(1).

#### **IV. DISPOSITION**

The protective order is stricken. The trial court is directed to prepare an amended abstract of judgment that omits any reference to the protective order and to forward a certified copy of the abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.

***People v. Maldonado***  
**H043371**